

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YATRAM INDERGIT, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC. and FRANK
OFFOR as Aider & Abettor,

Defendants.

**08 Civ. 9361 (JPO) (HBP)
ECF Case**

**DEFENDANTS' NOTICE OF RECENT PRECEDENT IN FURTHER OPPOSITION TO
PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

Defendants¹ file this Notice of Recent Precedent to supplement the arguments at pages 12-13 and 15-16 of their Opposition to Class Certification (Docket #209, filed Jan. 22, 2013) with the Supreme Court's March 27, 2013 decision in *Comcast Corp. v. Behrend*, No. 11-864, 2013 WL 1222646, at *5 (U.S. Mar. 27, 2013) ("Respondents' class action was improperly certified under Rule 23(b)(3). By refusing to entertain arguments against respondents' damages model that bore on the propriety of class certification, simply because those arguments would also be pertinent to the merits determination, the Court of Appeals ran afoul of our precedents requiring precisely that inquiry. And it is clear that, under the proper standard for evaluating certification, respondents' model falls far short of establishing that damages are capable of

¹ Rite Aid Corporation was not, and never has been during the relevant time frame, any Plaintiff's employer. Plaintiff Indergit's employer at all relevant times was Rite Aid of New York, Inc. Rite Aid Corporation appears specially and without waiver of any jurisdictional defenses.

measurement on a class-wide basis. Without presenting another methodology, respondents cannot show Rule 23(b)(3) predominance: Questions of individual damage calculations will inevitably overwhelm questions common to the class.”)(copy attached). Defendants will provide further briefing on the impact of this decision should the Court determine it would be of assistance.

Respectfully submitted, this the 29th day of March, 2013.

s/ Daniel E. Turner

Daniel E. Turner

(admitted *Pro Hac Vice*)

daniel.turner@ogletreedeakins.com

Tracey T. Barbaree

(admitted *Pro Hac Vice*)

tracey.barbaree@ogletreedeakins.com

Beth A. Moeller

(admitted *Pro Hac Vice*)

beth.moeller@ogletreedeakins.com

**OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.**

One Ninety One Peachtree Tower

191 Peachtree Street, NE, Suite 4800

Atlanta, Georgia 30303

Telephone: (404) 881-1300

Facsimile: (404) 870-1732

Patrick G. Brady, Esq.

Bar No. PB1114

PBrady@ebglaw.com

EPSTEIN, BECKER & GREEN P.C.

One Gateway Center, 12th Floor

Newark, New Jersey 07102

Telephone: (973) 642-1900

Facsimile: (973) 639-8556

*Attorneys for Defendants Rite Aid Corporation and Rite Aid
of New York, Inc.*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YATRAM INDERGIT, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC. and FRANK
OFFOR as Aider & Abettor,

Defendants.

**08 Civ. 9361 (JPO) (HBP)
ECF Case**

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2013, the foregoing document was filed via the Court's CM/ECF system, and was automatically served via electronic mail on all counsel of record:

Robert John Valli, Jr.
Sara Wyn Kane
James Vagnini
Aneeba Rehman
Valli Kane & Vagnini, LLP
600 Old Country Road, Suite 519
Garden City, NY 11530

Keith A. Raven
Raven & Kolbe, LLP
126 East 56th Street, Suite 202
New York, NY 10022

Jay D. Ellwanger
Deven Hahn
DiNovo Price Ellwanger & Hardy LLP
7000 North MoPac Expressway
Suite 350
Austin, TX 78731

Dated: March 29, 2013
Atlanta, Georgia

s/ Daniel E. Turner
Attorney for Defendants Rite Aid of
New York, Inc. and Rite Aid
Corporation